

APPEAL NO. 93509

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon Supp 1993). On May 18, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. At that hearing, evidence on three separate claims by appellant (claimant) was heard. In Docket Number 91-162609, the hearing officer determined that claimant's left ear became infected on August 10, 1991, as a result of an earplug problem, but that such infection resolved and claimant's current left ear problems are not caused by that incident. Claimant asserts that he never had an infection or other problem with his left ear prior to August 10, 1991, and asks that a review of the weight of the evidence be performed. Respondent (carrier) replies that the hearing officer should be affirmed.

DECISION

We affirm.

The parties agreed at the hearing that the issue in this case was whether the problems claimant is having with his left ear are related to the injury of August 10, 1991.

Article 8308-6.42(c) of the 1989 Act states that the Appeals Panel "shall determine each issue on which review was requested." Claimant's appeal basically states that the hearing officer erred because the August 10, 1991, earplug incident did cause his current ear problems.

The Appeals Panel determines:

That the hearing officer did not err in finding that the August 10, 1991, incident did not cause claimant's ear problems.

Claimant had worked for MPI, Inc. (employer) approximately one year using a grinder. The employer provided earplugs because of the noise. On August 10, 1991, claimant was unable to easily remove his left earplug. He went to a doctor on August 13, 1991, who noted swelling and appears to indicate that part of the plug was still in the ear. He used a solution on the ear and prescribed an antibiotic. In July 1992, claimant visited (Dr. B) with a cauliflower ear "with relatively flat tympanogram, reflecting poor tympanane membrane movement and a loss of hearing on the left ear." Claimant referred to the incident of 1991. Dr. B tested his hearing. Dr. B further stated in September 1992, that claimant's external ear deformity is not related to the stuck earplug. Claimant also saw (Dr. S) on August 31, 1992. Dr. S reported that he found no evidence of cauliflower ear. He did note tympanosclerosis, "a benign finding, which appears to be quite old." He concluded:

Mild high frequency hearing loss

Tympanosclerosis

Deformation of the left concha . . . a congenital deformity. I have never seen this occur as a result of trauma, and certainly not as a result of the trauma as indicated by this patient.

Dr. S found no need for any treatment.

Claimant testified that he had no problem with his left ear prior to getting the plug stuck in it. He commented in regard to the possibility of "a deformity from birth," that his other ear causes no problem for him. The claimant did not testify that he saw any doctor for his left ear between August 1991 and July 1992.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Article 8308-6.34(e) of the 1989 Act. She believed that claimant's ear became infected from the earplug in August 1991 and so found, but did not believe that that condition caused claimant's current left ear problems. There was no issue as to the initial injury, only as to the present condition of the left ear. The medical evidence strongly supports her determination on the issue before her and provides sufficient evidence to support her decision that causation was not shown and that claimant is not entitled to any further benefits since the initial infection has been resolved.

The decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge